

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

BARTRAM YIHNI DABNEY,

Plaintiff,

-against-

9:11-CV-0273 (LEK/RFT)

DONALD SAWYER, Executive Director,  
Marcy Mental Hospital; JOANN  
WALDRON, Chief of OMH Satellite,  
Clinton Correctional Facility; DR.  
BERGEN, Psychiatrist, Clinton  
Correctional Facility; DR. LEE, Medical  
Director, Clinton Correctional Facility; DR.  
FAROOKI, Dentist; SARA NEPHEW,  
OMH Therapist, Clinton Correctional  
Facility; C.O. BEESHAW, Correctional  
Officer, Clinton Correctional Facility; DR.  
BATTU, Psychiatrist, Great Meadow  
Correctional Facility; J. NOCERA,  
Assistant Inspector General, Department  
of Correctional Services; and V.  
DONAHUE, Social Worker, Great  
Meadow Correctional Facility,

Defendants.

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**ORDER**

This *pro se* action under 42 U.S.C. §§ 1983, 1985, and 1986 comes before the Court on a Report-Recommendation filed September 13, 2013, by the Honorable Randolph F. Treece, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Dkt. No. 59 (“Report-Recommendation”). Judge Treece recommends that Defendants’ Motion for judgment on the pleadings be granted as to Plaintiff’s claims for: (1) improper investigation by Defendant J. Nocera; (2) inadequate winter clothing provision by Defendant Foley; and (3) inadequate medical care by

Dr. Lee for Plaintiff's sore rib.<sup>1</sup> See Report-Rec. at 24; Dkt. No 48 ("Motion"). Judge Treece recommends denying Defendants' Motion as to Plaintiff's claims for: (4) inadequate mental health care by Defendants Sawyer, Waldron, Savage, Donahue, Battu, Bergen, and Nephew; (5) inadequate physical health care by Dr. Lee for Plaintiff's Hepatitis C; and (6) inadequate dental care by Defendant Farooki. Id. at 24-25. Judge Treece also recommends that the following claims, on which Defendants did not seek judgment on the pleadings, should proceed: (7) retaliation by Defendants Donahue, Bergen, Beeshaw, Savage, Waldron, Sawyer, and Nephew; (8) conspiracy among Defendants Savage, Waldron, Bergen, Sawyer, and Nephew; (9) racial discrimination by Defendants Foley and Dr. Lee; and (10) failure to protect by all Defendants. Id. at 25.

Neither Plaintiff nor Defendants filed objections to the Report-Recommendation within the fourteen-day objection period. See 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b)(2). See generally Dkt. The Court therefore has reviewed the Report-Recommendation for clear error and found none. See Cephias v. Nash, 328 F.3d 98, 107 (2d Cir. 2003) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point."); Farid v. Bouey, 554 F. Supp. 2d 301, 306-07 & n.2 (N.D.N.Y. 2008).

Accordingly, it is hereby:

**ORDERED**, that the Report-Recommendation (Dkt. No. 59) is **APPROVED and ADOPTED in its entirety**; and it is further

**ORDERED**, that Defendants' Motion (Dkt. No. 48) for judgment on the pleadings is **GRANTED in part** consistent with the Report-Recommendation (Dkt. No. 59); and it is further

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<sup>1</sup> Judge Treece recommends that Plaintiff's second and third claims be dismissed without prejudice to Plaintiff repleading them in an amended complaint with proper support.

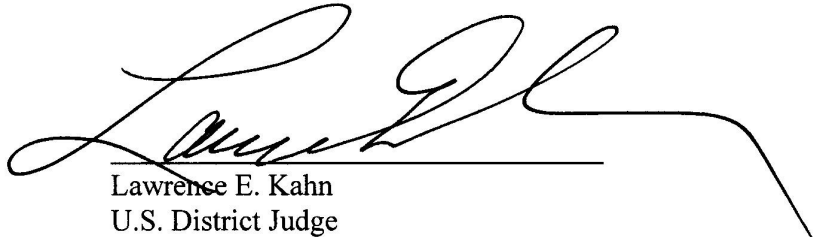
**ORDERED**, that Plaintiff is granted leave to file an amended complaint **within thirty (30) days** of the filing of this Order to cure the deficiencies in his claims as identified in the Report-Recommendation. Any amended complaint will supersede the original Complaint in all respects and therefore must be a complete pleading; and it is further

**ORDERED**, that this case is referred back to Judge Treece to lift the stay and set a schedule for proceeding; and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: September 30, 2013  
Albany, NY



Lawrence E. Kahn  
U.S. District Judge